



KANSAS

D. KENT HURN, CHAIRPERSON

DEPARTMENT OF ADMINISTRATION
CIVIL SERVICE BOARD

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TO: George Vega, Interim Director, Division of Personnel Services
Tracy Diel, Director, Office of Administrative Hearings
D. Kent Hurn, Chairman, Civil Service Board

FROM: Peggy Graham, Secretary, Civil Service Board

DATE: January 17, 2006

SUBJECT: Quarterly Update

The following reflects the Civil Service Board cases in which action was taken since the October 15, 2005 quarterly report:

A. Cases Decided and/or Disposed Of:

1. **Name Removed**, shared leave *dismissed*
Lansing Correctional Facility
Correctional Counselor I. The appellant's application for shared leave was denied. The agency filed a motion to dismiss for lack of jurisdiction and the appellant responded. The Board dismissed the appeal for lack of jurisdiction as the appellant was not dismissed, demoted or suspended.
2. **Name Removed**, dismissal *withdrawn*
Topeka Correctional Facility
Correctional Officer I. Appellant had an unduly familiar relationship with an inmate when he permitted her to call him at his home at least 17 times and spoke with her for 17 to 30 minutes each time. During the calls, the appellant discussed with the inmate personal information about himself, his family, other employees, other inmates and other things prohibited by facility policy. The appellant received a suspension in April 2005 for undue familiarity with an inmate. The parties reached a settlement agreement and the appellant withdrew his request for a hearing.
3. **Name Removed**, 5-day suspension *withdrawn*
Kansas Correctional Industries
Correctional Industries Manager. Appellant was assigned to supervise inmates at Kansas Correctional Industries. While he was in his office and not properly attending to the inmates, they engaged in horseplay in violation of facility policy. The parties reached a settlement agreement and the appellant withdrew his request for a hearing.

4. **Name Removed**, dismissal *modified*
The University of Kansas
Physical Plant Supervisor. Appellant supervised the sheet metal shop at KU. In the fall of 2004 it was discovered that four errors were made in the installation of fittings in different sheet metal projects across campus. While the appellant was responsible for the installation of the fittings from her shop, it was clear from the evidence that mistakes were made by other departments as well in relation to these fittings and although the errors could have been significant over time, they were only four mistakes out of hundreds of projects completed by the sheet metal shop. Given the evidence presented, the Board found that the decision of the appointing authority to dismiss the appellant was unreasonable and modified the agency action to reinstatement with the opportunity for the appellant to resign her position.
5. **Name Removed**, dismissal *withdrawn*
Department of Corrections
Parole Officer. The appellant was dismissed from his parole officer position. The parties reached a settlement agreement prior to the scheduled hearing and the appellant withdrew his request for a hearing.
6. **Name Removed**, dismissal *dismissed*
Kansas Neurological Institute
Developmental Disability Technician. The appellant was dismissed for flagrantly and habitually improper use of leave. The appellant failed to file his request for a hearing with the Board within the 30 days required by statute. The appeal was dismissed for lack of jurisdiction.
7. **Name Removed**, dismissal *withdrawn*
Department of Social and Rehabilitation Services
Human Services Specialist. The appellant used his state issued computer to access internet web sites that were found to be inappropriate. The appellant withdrew his request for a hearing prior to the scheduled hearing date.
8. **Name Removed**, resignation *dismissed*
El Dorado Correctional Facility
Correctional Officer. The appellant turned his identification badge and walked off of the job on September 14, 2005. The facility considered his abandonment of his position to be a resignation and accepted his resignation in writing on October 3, 2005. The facility filed a motion to dismiss for lack of jurisdiction and the appellant failed to respond. The Board dismissed the appellant's request for a hearing for lack of jurisdiction.
9. **Name Removed**, failure to promote/whistleblower *dismissed*
Wichita State University
Police Officer. The appellant was not selected for a promotion within his department, and the appellant claimed WSU was in violation of the Kansas Whistleblower Act and in violation of the civil service protection permitting an applicant to be examined for a position applied for. The agency filed a motion to dismiss for lack of jurisdiction. The parties were permitted to file briefs regarding the motion to dismiss. After reviewing the briefs the Board found that there was not a violation of the Kansas Whistleblower Act that would give jurisdiction to the Board in this matter. The Board also found that while the appellant was not selected for promotion, he was "examined" in accordance with the Kansas Civil Service Act. The matter was dismissed for lack of jurisdiction.

10. **Name Removed**, 2-day suspension *withdrawn*
Hutchinson Correctional Facility
Correctional Officer. The appellant allowed two security gates to remain open during a power outage that could have resulted in a security breach. The parties reached a settlement and the appellant withdrew his request for a hearing.
11. **Name Removed**, dismissal *modified*
Department of Social and Rehabilitation Services
Social Worker. The appellant failed to make an initial contact with an alleged victim of physical abuse in the prescribed time. In working through that error, the agency discovered that the appellant had failed to make initial contacts within the prescribed time on several other cases, that she had a backlog of cases that had not been closed since 1997, when cases are supposed to be closed within 30 working days, and that she had lied to her supervisor about the number of cases that she had open. After hearing all of the evidence the Board found that the decision of the appointing authority was unreasonable and modified it to a 45 day suspension, ordered at least 2 special evaluations and ordered the appellant to contact Lifeline and follow their recommendations.
12. **Name Removed**, dismissal *withdrawn*
Ellsworth Correctional Facility
Correctional Officer I. The appellant received two unsatisfactory performance evaluations within 180 days. The parties reached a settlement and the appellant withdrew his request for a hearing.
13. **Name Removed**, 10 day suspension without pay *withdrawn*
Larned Juvenile Correctional Facility
Juvenile Correctional Officer III. The appellant used a non-approved restraint technique to subdue a juvenile and to take him to the ground. He interlaced his fingers, placed them behind the juvenile's neck and used the combined force of his interlaced hands and body weight to pull down three times on the juvenile's neck forcing him to the ground. He also used unacceptable profane and inflammatory language during this incident. The appellant withdrew his request for a hearing.
14. **Name Removed**, dismissal *withdrawn*
Larned State Hospital
Paint Shop Supervisor. The appellant created a hostile work environment in his shop by threatening and intimidating his employees when they refused to cover for him when he took extended lunches and breaks. The parties reached a settlement agreement and the appellant withdrew his request for a hearing.
15. **Name Removed**, 3-day suspension *affirmed*
Kansas State University
Custodial Specialist. The appellant engaged in an altercation with a co-worker on the campus of KSU. The appellant was not on duty at the time of the altercation, but the co-worker was. The appellant used profanity and yelled at his co-worker about a dispute over money, about the co-worker's wife and about being disciplined for actions of the co-worker. The altercation was broken up by a supervisor before it became physical. After hearing all of the evidence, the Board found that the decision of the appointing authority was reasonable.

16. **Name Removed**, dismissal *modified*
Department of Wildlife and Parks
Natural Resource Officer I. The appellant was involved in a domestic altercation with his wife at his home after ending his shift one evening. While he was arrested for domestic battery, he was never charged with a criminal offense for the events that occurred with his wife. At the time of the altercation, he was seriously ill as an undiagnosed diabetic and his wife was experiencing undiagnosed bi-polar episodes. The appellant's wife had been drinking and was attempting to drive her vehicle. The appellant made a poor decision to slap her when she became hysterical, in his attempt to prevent her from driving. Although his actions in slapping his wife were wholly inappropriate and constituted conduct detrimental to State service, given the totality of the circumstances, dismissal was unreasonable. The Board modified the decision of the appointing authority to a 20-day suspension without pay.
17. **Name Removed**, dismissal *affirmed*
Kansas Juvenile Correctional Complex
Juvenile Correctional Officer I. The appellant was assigned to a security pod on March 20, 2005. During his shift, a juvenile offender in the isolation room spilled his breakfast. The appellant, while alone, opened the locked outer door to the room and asked the control officer to open the inner door to the room which is in violation of the order that two officers be present any time the offender's doors are opened. The appellant then left both doors open while he went to the second floor of the pod to retrieve a broom. The offender left the isolation room and began to climb the stairs to the second floor. Another officer observed this and ran after the offender. The offender met the appellant on the stairs with the other officer at the bottom of the stairs. The appellant jabbed the offender with the broom handle several times and poked him with the bristles of the broom while the offender descended the stairs. Once back in the offender's room, the appellant sprayed the offender with pepper spray even though the offender had been compliant and had not made any aggressive movements since he was found on the stairway. After hearing all of the evidence, the Board found that the decision of the appointing authority was reasonable.
18. **Name Removed**, 5-day suspension *withdrawn*
Department of Transportation
Storekeeper Specialist. The appellant intentionally loosened his belt and partially dropped his pants revealing his underwear in an effort to "moon" a security camera installed in the shop building. He was looking at two co-workers and the camera as he did this. He then walked out of the camera's view, then returned to the area and grabbed his crotch in a suggestive and inappropriate manner. The appellant withdrew his request for a hearing prior to the scheduled hearing date.
19. **Name Removed**, dismissal/resignation/whistle blower *dismissed*
Wichita State University
Police Officer. The appellant resigned her position with WSU claiming that she had experienced a hostile work environment. She claimed that her need to resign was as a result of whistle blower actions on her part and was a constructive discharge because of the hostile work environment. The agency filed a motion to dismiss alleging that the Board did not have jurisdiction to hear the appellant's appeal. After allowing both parties to file briefs on the issue, the Board found that although filed within the 90-day requirement for whistle blower actions, the appellant's situation does not meet the whistle blower provision of the civil service statute as the

employee was not disciplined for any whistle blower activity. In addition, her allegation that she was constructively discharged is not properly before the Board as she did not file her request for hearing within the thirty day requirement for such actions. The matter was dismissed for lack of jurisdiction.

20. **Name Removed t**, dismissal *withdrawn*
Kansas Soldier's Home
Registered Nurse Senior. The appellant developed an inappropriate relationship with a resident of the soldier's home and permitted him to engage in prohibited conduct while residing at the soldier's home. The parties reached a settlement agreement and the appellant withdrew her request for a hearing prior to the scheduled hearing date.
21. **Name Removed**, dismissal *withdrawn*
Highway Patrol
Capital Police Officer II. The appellant made racist, degrading and wholly inappropriate remarks about other individuals during a conversation with other KHP staff and other state employees. He had been counseled about making such inappropriate remarks previously. He received a letter of reprimand and training regarding his inappropriate conduct, and shortly thereafter sexually harassed a co-worker. Finally, he abused his leave privileges. The appellant withdrew his request for a hearing prior to the scheduled hearing date.
22. **Name Removed**, demotion *reversed*
Social and Rehabilitation Services
Public Service Executive II. The appellant was demoted as part of a reorganization conducted by the agency. The agency filed a motion for summary judgment alleging that the Board did not have jurisdiction over non-disciplinary demotions. After allowing both parties to fully brief the issue, the Board found that it does have jurisdiction over disciplinary and non-disciplinary demotions, denied the motion for summary judgment and reversed the agency action for failure to comply with the provisions of the Civil Service Act.

B. Cases Filed Between October 15, 2005 and January 15, 2006:

1. Osawatomi State Hospital, filed October 17, 2005
2. Larned Juvenile Correctional Facility, filed October 20, 2005
3. Social and Rehabilitation Services, filed October 24, 2005
4. Department of Transportation, filed October 25, 2005
5. Highway Patrol, filed November 1, 2005
6. Parsons State Hospital, filed November 4, 2005
7. Kansas Neurological Institute, filed November 8, 2005
8. Department of Revenue, filed November 14, 2005
9. Social and Rehabilitation Services, filed November 14, 2005
10. Lansing Correctional Facility, filed November 23, 2005
11. Kansas Neurological Institute, filed November 23, 2005
12. Wildlife and Parks, filed December 2, 2005
13. Parsons State Hospital, filed December 9, 2005
14. Department of Corrections, filed December 9, 2005
15. Animal Health Department, filed December 12, 2005
16. Social and Rehabilitation Services, filed December 23, 2005
17. Department of Corrections, filed December 23, 2005
18. Department of Transportation, filed January 11, 2006

19. Department of Transportation, filed January 11, 2006
20. Osawatomie State Hospital, filed January 13, 2005
21. Osawatomie State Hospital, filed January 13, 2005

C. Cases Still To Be Heard:

1. dismissal, Social and Rehabilitation Services, set 6/6/06
2. dismissal Kansas Neurological Institute, set 4/5/06
3. 3-day suspension, Animal Health Department, set 5/17/06
4. 1-day suspension, Department of Corrections, set 4/20/06
5. dismissal, Osawatomie State Hospital, set 2/23/06
6. 1-day suspension, Department of Corrections, set 2/6/06
7. 5-day suspension, KU Medical Center, set 3/9/06
8. dismissal, Parsons State Hospital, set 4/6/06
9. dismissal, Department of Transportation, set 2/21/06
10. dismissal, Social and Rehabilitation Services, set 4/19/06
11. dismissal, Osawatomie State Hospital, set 2/24/05
12. 5-day suspension, Department of Transportation , set 2/23/06
13. 20-day suspension, Department of Labor, set 1/18/06
14. dismissal, Wildlife and Parks, set 5/3and 4//06
15. dismissal, Parsons State Hospital, set 5/18/06
16. 3-day suspension, Kansas State University, set 1/5/06
17. dismissal, Osawatomie State Hospital, set 2/22/06
18. dismissal, Social and Rehabilitation Services, set 1/19/06
19. dismissal, Osawatomie State Hospital, set 2/22/06
20. 30-day suspension, Department of Revenue, motion to dismiss pending
21. demotion, Department of Transportation, set 3/7/06
22. dismissal, Social and Rehabilitation Services, set 3/8/06
23. demotion, Social and Rehabilitation Services, set 2/9/06
24. dismissal, Highway Patrol, set 6/7/06
25. dismissal, Kansas State University, pending motions
26. 15-day suspension, Topeka Correctional Facility, set 2/8/06

D. Statistics for Completed Cases:

1. Dismissals: 12
2. Demotions: 1
3. Suspensions: 5
4. Other: 4

1. Affirmed: 2
2. Reversed: 1
3. Modified: 3
4. Dismissed: 5
5. Withdrawn: 11

1. Department of Corrections: 7
2. Social and Rehabilitation Services: 5
3. Wichita State University: 2

4.	Juvenile Justice Authority:	2
5.	University of Kansas:	1
6.	Wildlife and Parks:	1
7.	Kansas Veteran's Home:	1
8.	Kansas State University:	1
9.	Department of Transportation:	1
10.	Highway Patrol:	1